

**Letter of Findings: 03-20130463P
Withholding Tax
For the Year 2012**

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ISSUE

I. Late Payment Penalty – Withholding Tax.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it is entitled to abatement of a ten-percent penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business which files withholding tax returns. Taxpayer filed late returns and the Department of Revenue ("Department") assessed statutory "late" penalties. Taxpayer admits that the returns were late but asks the Department to exercise its authority to abate the penalties. An administrative hearing was conducted during which Taxpayer explained the basis for the request. This Letter of Findings results.

I. Late Payment Penalty – Withholding Tax.

DISCUSSION

Taxpayer filed non-resident withholding returns for the year ending 2012. Taxpayer states that 2013 was the first year it was required to report and pay withholding tax by means of the Department's INTAX online portal.

IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment." Since the estimated withholding payment was untimely, the Department assessed the penalty.

However, Taxpayer asks that the Department exercise its authority to abate the penalty.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including a late-payment penalty – is presumptively valid.

Indiana law contains a provision allowing for abatement of penalty. IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed" Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

Taxpayer's returns were undisputedly late. Taxpayer is a large, sophisticated Taxpayer fully capable of determining its state tax liabilities and filing the correct forms – electronic or otherwise – in a timely and accurate fashion. However, in this case there is insufficient information to establish that Taxpayer's actions were so egregious as to constitute "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of [this] taxpayer" the Department agrees that the ten-percent penalty should be abated. However, Taxpayer is placed on notice that it is unlikely that the Department will abate subsequent penalties under similar circumstances.

FINDING

Taxpayer's protest is sustained.

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